

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**JOHN SCOTT CURRY,
a/k/a EL JOHN BEY,**

Petitioner,

v.

**WARDEN, ERIE COUNTY PRISON,
et al.,**

Respondents.

Case No. 1:18-cv-278-SPB-RAL

MEMORANDUM ORDER

The petition for a writ of habeas corpus in this case was received by the Clerk of Court on September 24, 2018 and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. ECF No. 1, 4. On January 7, 2019, Respondent, the District Attorney of Erie County, filed a motion to dismiss the Petitioner's case based on his alleged failure to exhaust his claims.

On May 29, 2019, Magistrate Judge Lanzillo issued a Report and Recommendation recommending that the Respondent's motion be granted, the Petitioner's claims be dismissed with prejudice, and a certificate of appealability be denied. ECF No. 11. The Magistrate Judge reasoned that Petitioner's claims had not been properly exhausted, and they are now procedurally defaulted. *Id.* Objections to the Report and Recommendation were due to be filed on June 17, 2019. To date, no objections have been filed.¹

¹ The Court notes that the Report and Recommendation was mailed to the Petitioner on May 29, 2019 at his last address of record, and returned fifteen days later with the notation "not here," as reflected on the docket. To the Court's knowledge, no forwarding address has been supplied by the Petitioner.

After *de novo* review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 28th day of June, 2019, IT IS ORDERED that the Motion to Dismiss Petition for Writ of Habeas Corpus on Behalf of Respondent District Attorney of Erie County, ECF No. [6], be, and hereby is, GRANTED.

IT IS FURTHER ORDERED that the within petition for a writ of habeas corpus be, and hereby is, DISMISSED with prejudice. IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on May 29, 2019, ECF No. [11], is hereby adopted as the opinion of this Court. Further, because jurists of reason would not find it debatable whether Petitioner failed to properly exhaust his claims and/or whether those claims have been procedurally defaulted, IT IS HEREBY ORDERED that a certificate of appealability is DENIED.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."

A handwritten signature in black ink, reading "Susan Paradise Baxter". The signature is fluid and cursive, with the first name "Susan" being the most prominent.

SUSAN PARADISE BAXTER
United States District Judge

cm: John Scott Curry
42063
Erie County Prison
1618 Ash Street
Erie, PA 16503
(via U.S. Mail)

Michael E. Burns, Esq. (via CM/ECF)

The Honorable Richard A. Lanzillo (via CM/ECF)